

# Happy 2014!

## From Barten Law Office, P.C.

2014, ISSUE 1

JANUARY 30, 2014

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## Temporary Relief Measures Available for Filipino Nationals

**D**ue to the recent typhoon “Yolanda” and its devastation to the Philippines, USCIS has taken relief measures for Filipino nationals affected by the typhoon. Filipino nationals may be eligible for the following:

- Change or extension of status for those currently in nonimmigrant status, even if the authorized period of stay has expired
- Extension of advance parole
- Expedited processing of advance parole requests
- Expedited decision/approval of requests for off-campus employment for F-1 Students experiencing economic hardship
- Expedited processing of certain immigrant petitions
- Expedited decisions on employment authorization applications



Lawful permanent residents stranded in the Philippines without necessary documentation (permanent resident cards/travel documents) can seek assistance from USCIS and the Department of Status in obtaining their documents.

If you have been impacted by the typhoon, please contact our office for more information.

## Immigration Reform is Still Possible

**D**espite the recent setbacks, immigration reform is still possible. Speaker John Boehner has stated that he still supports immigration reform in the areas of internal enforcement, visas, and border security, as well as reform for undocumented immigrants.

The bill will likely look much different than the comprehensive legislation proposed by the Senate. The House will look at smaller, separate bills rather than one large bill. Look for more progress on comprehensive immigration reform in 2014.

How can you prepare for comprehensive immigration reform?

- **Organize your documents.** Gather important immigration paperwork, passports, birth certificates, etc., as they will be needed if reform passes.
- **Complete a background check.** Talk to our office about performing FBI clearances/Freedom of Information Act requests in advance to obtain important background history prior to filing applications. Because these checks can take months, it is a good idea to be proactive to avoid future delays.
- **Schedule a consultation.** Meet with one of our experienced attorneys to review your immigration options. There may be options available to you now which are actually faster and easier than the potential immigration reform.

Barten Law Office is hopeful that immigration reform will pass, and we will keep you up-to-date on legislation that may benefit you. Look for further updates from our office in the future!

## Visas Available for Petitions Filed in September of 2013 or Earlier for Spouses and Children of Permanent Residents

According to the December Visa Bulletin, visas are now available for spouses and children of permanent residents (Category F2A) for petitions filed in September of 2013. In the past, spouses and children of permanent residents had to wait several years before a visa was available, resulting in lengthy separation from family. With the new bulletin, a beneficiary of a petition filed just 3 months ago in September would now be eligible to continue with the immigrant visa process. This is an exciting departure from the bulletins of months past.

Below is the complete December Visa Bulletin issued by the Department of State for family-based categories:

Family-Sponsored	All Charge - ability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
F1	01JAN07	01JAN07	01JAN07	01OCT93	15AUG01
F2A	08SEP13	08SEP13	08SEP13	01SEP13	08SEP13
F2B	08JUL06	08JUL06	08JUL06	01MAY93	22MAY03
F3	15MAY03	15MAY03	15MAY03	01JUN93	08FEB93
F4	22OCT01	22OCT01	22OCT01	08NOV96	08AUG90

Numbers change from month-to-month, and we have seen immigrant visa numbers retrogress or become stagnant in the past. Therefore, it is important that you get your applications/petitions on file right away to avoid future delay.



JoAnn Barten, Attorney

*“With the new bulletin, a beneficiary of a petition filed just 3 months ago in September would now be eligible to continue with the immigrant visa process.”*



Megan Lantz, Attorney

On March 4, 2013, USCIS began accepting provisional waiver applications for immigration visa applicants who are spouses, children or parents of United States Citizens. This new waiver process allows for the adjudication of waivers for unlawful presence before the visa applicant departs the United States for the consular interview. While the new waiver does not change the necessity to depart the United States for the interview, it shortens the length of time the immigrant visa applicant remains outside of the United States, promoting prompt family reunification.

To qualify, you must:

- Be the beneficiary of an approved immigrant visa petition classifying you as an immediate relative (spouse, parent, or child under 21) of a U.S. Citizen
- Be at least 17 years of age
- Be physically present in the United States
- Have an immigrant visa case pending with the Department of State and already paid the immigrant visa processing fee
- Be inadmissible only for unlawful presence in the United States of more than 180 days, but less than 1 year during a single stay, or unlawful presence for 1 year or more during a single stay

As part of the waiver process, you will be required to show that you have a United States Citizen spouse or parent who would suffer extreme hardship if you were refused admission to the United States. You must show extreme hardship to the qualifying relative if she were forced to remain in the United States without the immigrant visa applicant, and in the alternative, if she were forced to relocate to the immigrant visa applicant's country of origin.

## How Can We Help?

Our office routinely and successfully handles waiver applications on a regular basis. We can help you by:

- Determining whether you or your loved one qualifies for the provisional waiver
- Assessing the hardship that you or your loved one would face if the immigrant were refused admission to the United States
- Assisting you in obtaining evidence to show extreme hardship
- Assembling your waiver petition in a professional, thorough manner, highlighting the strengths of your case for fast and efficient adjudication
- Assisting you in preparing affidavits and other documentation to support your application

Contact our office today to set up a consultation to determine how the provisional waiver can benefit you!

*“The U waiver of inadmissibility can pardon false claims to United States Citizenship, crimes, unlawful entry, unlawful presence, and a variety of other inadmissibility issues.”*



## The U Visa for Victims of Certain Crimes

The U Visa was created by the Victims of Trafficking and Violence Protection Act of 2000 to provide victims of certain crimes who have cooperated in their cases with immigration benefits, including lawful status for a four-year period, work authorization, and a path to permanent residency. Unlike many visas, it allows applicants who are currently in the United States after having entered the United States unlawfully to obtain status without returning to their home countries. Similarly, applicants or derivatives residing outside of the United States may also consular process.

In order to qualify for the U Visa/U Nonimmigrant Status, the applicant must show that she has been the victim of qualifying criminal activity (i.e. felonious assault, sexual assault or domestic violence). In addition, she must show that she has been, is being or is likely to be helpful in the investigation or prosecution of the case, possesses information concerning the crime, and suffered substantial physical or mental abuse. The crime must have occurred in the United States or otherwise violated United States laws. In addition, the applicant must obtain a certification from a law enforcement official stating that she has been, is being or is likely to be helpful in the investigation or prosecution of the crime.

The principal applicant may include his or her qualifying family members in her petition. If the principal applicant is over 21 years of age, her qualifying family members include her spouse and unmarried children under 21 years of age. If the principal applicant is a minor under 21 years of age, she may include her spouse, unmarried children under the age of 21, parents, and unmarried siblings under the age of 18.

The U Visa is unlike any other immigration benefit in that its waiver is very broad. The waiver of inadmissibility can pardon false claims to United States Citizenship, crimes, unlawful entry, unlawful presence, and a variety of other inadmissibility issues. However, it is discretionary. USCIS is allowed to exercise discretion and waive most grounds of inadmissibility if it is the national interest.

Once approved, the applicant will receive lawful U Nonimmigrant Status for a period of 4 years. In addition, she will receive work authorization for the 4-year period. After 3 years of continuous presence in U Nonimmigrant Status, she is eligible to apply for permanent residency.

In order to qualify for permanent residency, she must show that she has continuously resided in the United States for a period of 3 years since the date of admission as a nonimmigrant, is a person of good moral character, and that her continued presence is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest.

The applicant's derivative beneficiaries will also be eligible to adjust status to that of a permanent resident provided that they too meet the qualifications for permanent residency.

# VAWA Applications for Spouses and Children of Abusive Lawful

## Permanent Residents and United States Citizens

Under the Violence Against Women Act (VAWA), spouses and children of Abusive Lawful Permanent Residents or United States Citizens are eligible to file for their immigration status and ultimately permanent residency without knowledge or assistance from their abuser. Likewise, parents of Abusive United States Citizen Children are eligible for VAWA if the child is 21 years of age or older at the time of filing. Abusers often use immigration status as a tool to further manipulate and control their victims. Therefore, VAWA was created to remedy this problem.

### To Qualify, A VAWA Self-Petitioner must show that he or she:

- Is the spouse or child of a United States Citizen or Lawful Permanent Resident Abuser, or a parent of an Abusive United States Citizen Child over 21 years of age
- Resided with the United States Citizen or Lawful Permanent Resident Abuser
- Was subjected to battery/extreme cruelty during the marriage or, if a self-petitioning child or parent, was subjected to battery/extreme cruelty by the United States Citizen or Lawful Permanent Resident Abuser
- Entered the marriage in good faith (in the case of a self-petitioning spouse)
- Is eligible for immigrant classification based on the relationship to the Abuser
- Is a person of good moral character



Self-Petitioning spouses are not required to stay married to their abusers to qualify for VAWA. A Self-Petitioner will still be eligible if their abusive spouse died within 2 years of filing. In the case of divorce, the Self-Petitioner will still qualify for VAWA if the marriage was terminated within the 2 years prior to filing, and must show there is a connection between the divorce and the battery/extreme cruelty. In addition, bigamy is not a bar to self-petitioning, depending on the circumstances.

If an abuser loses his or her status (i.e. loses permanent residency) due to a domestic violence conviction and/or incident, the Self-Petitioner will nevertheless qualify for VAWA if she applies within 2 years of the date in which the abuser lost his or her status.

Upon approval, VAWA Self-Petitioners will be placed in deferred action and will be eligible to apply for work authorization based on the deferred action. It is important to note that VAWA Self-Petitioners who are immediate relatives (spouses of United States Citizens; children under 21 years of age of United States Citizens, or parents of United States Citizen Children over 21) may file their petition and residency in "one step" thereby allowing for the receipt of an employment authorization document approximately 3 months after filing. Spouses and children of permanent residents may wait longer for their employment authorization document depending on whether a visa is yet available.

If you or someone you know is a victim of domestic violence, contact us for more information.

## Its that Time Again! H-1B Visa Petitions to be Accepted April 1, 2014 for FY 2015

Spring is just around the corner and that means it is time to begin preparing your H-1B Visa Petitions for filing on April 1, 2014 for the FY 2015 Cap season. The H-1B program has a statutory cap of 65,000 for the fiscal year, with an additional 20,000 under the H-1B advanced degree exemption. For FY 2014, USCIS reached the cap within the first week of the filing period, on April 5, 2013, receiving approximately 124,000 H-1B Petitions (including petitions filed for the advanced degree exemption). In light of this, Barten Law Office recommends that you begin preparing your H-1B Petitions in advance to ensure that USCIS promptly receives your filing. Even short delays may mean that your company will lose out on this opportunity.

As a reminder, the H-1B program is utilized for employers to hire foreign workers in specialty occupations that require theoretical or technical expertise in specialized fields, such as engineers, scientists, or computer programmers. A minimum of a bachelor's degree or equivalent in the specific specialty is required.

Please contact Barten Law Office to schedule a time to meet with one of our attorneys to discuss the H-1B Visa process and its requirements. Because we anticipate that the cap will be met in a very short period of time for FY 2015, it is important to be proactive in preparing your case so that it can be filed when the season opens on April 1, 2014.

*Contact us for more information!*



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